



June 5, 2002

Mr. Gordon Bowman
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2002-3051

Dear Mr. Bowman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163870.

The Travis County Sheriff's Office (the "sheriff") received a request for "a copy of or access to any and all seizure and/or forfeiture of assets by or on behalf of the [sheriff] and/or the Central Texas Narcotics Task Force, within the past five years," to include "the name of the suspect, alleged crime, description of asset that was seized or forfeited, name of all personnel involved with the disposition of the case." The requestor additionally seeks "a copy of or access to any and all complaints filed or disciplinary actions taken against employees of the [sheriff]," including the "name, address, rank, date, date of action, if any; reason for disciplinary actions and details of the incident or violation." You inform us that some of the responsive information is being released to the requestor, but claim that the remaining responsive information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.119, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, you inform us that the sheriff is releasing certain responsive information, including "information related to seizure and/or forfeiture of assets, but may not include information protected by an exception to disclosure listed above." Upon review of the submitted

¹ You also raised section 552.103. However, you submitted no arguments in support of this exception. See Gov't Code § 552.301(b), (e)(1)(A). Therefore, we do not address the applicability of this exception to the submitted information.

² We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

representative sample, we note that these records relate only to complaints filed and disciplinary actions taken against employees of the sheriff. Therefore, to the extent the sheriff has information pertaining to seizure and/or forfeiture of assets that is responsive to the request, but which has not been released to the requestor, the sheriff must release such information at this time. *See* Gov't Code §§ 552.006, .301(a), .302.

We next note that the sheriff requested a clarification with regard to that part of the request pertaining to complaints and disciplinary actions against employees of the sheriff. In responding to a request for information, the governmental body must make a good-faith effort to relate the request to the information that it holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). If what information is requested is unclear, the governmental body may ask the requestor to clarify the request. *See* Gov't Code § 552.222(b). You indicate that while the sheriff has sought a clarification, the sheriff had not received a clarification as of the date of your request to this office. Until a requestor has responded to the request for a clarification, the governmental body need not respond to the request. *See* Open Records Decision No. 663 (1999) (providing for tolling of ten business-day time limit to request attorney general decision while governmental body awaits clarification). In this case, however, you have submitted a representative sample of records responsive to the part of the request for which you sought clarification, and have raised exceptions to disclosure of this information. Accordingly, we will address the exceptions you have raised for the submitted information.

You assert that a portion of the requested information is confidential under the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

The medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). We have marked the medical records that may be released only as provided under the MPA. Open Records Decision No. 598 (1991).

The submitted information also includes records that are subject to section 261.201 of the Family Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

The submitted information includes records pertaining to an investigation of an alleged sexual assault in which the victim was a child for purposes of chapter 261. *See* Fam. Code § 101.003(a) (“child” is generally defined as “a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes”). We thus conclude that this information, which we have marked, comes within the scope of section 261.201 of the Family Code and may be released only in accordance with that provision. You have not indicated that the sheriff has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the information that we have marked must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). *But see* Fam. Code § 261.201(b) (provision for court ordered access).

³We note that if the investigation has been referred to the Department of Protective and Regulatory Services (“DPRS”), the requestor, who purports to represent the child and the child’s parent, may be entitled to access DPRS’s records. Section 261.201(g) of the Family Code provides that DPRS, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

This office has found that the following types of information are excepted from required public disclosure under constitutional or common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, the public has a legitimate interest in knowing the reasons for dismissal, demotion, promotion, or resignation of public employees. *See* Open Records Decision No. 444 (1986). We also note that the privacy rights of an individual lapse upon death. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded”) (quoting Restatement of Torts 2d). We have marked the information in the submitted records that must be withheld under common-law privacy.

For the remaining information, we address your argument under section 552.108. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested information *may* relate to criminal investigations or prosecutions that are ongoing, but you have not identified any specific investigation or prosecution to which the requested information pertains. Therefore, we are unable to conclude that the release of the requested information at this time would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of*

Houston, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

You also argue specifically that witness names should be withheld under section 552.108. Whether disclosure of particular records will interfere with crime prevention must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981). Where it can be established from an examination of the facts of a particular case that disclosure of witness identities and statements might subject the witnesses to possible intimidation or harassment, that information may be excepted from disclosure under section 552.108. Open Records Decision Nos. 611 (1992), 297 (1981), 252 (1980); *see also* Open Records Decision Nos. 169 (1977) and 123 (1976) (information protected by common law right of privacy if disclosure presents tangible physical danger). After due consideration of your comments and our review of the submitted information, we conclude that you have not established that release of the witness identities and statements in this case would subject the witnesses to possible intimidation or harassment. Therefore, witness identities may not be withheld under section 552.108(a)(1) or section 552.108(b)(1) of the Government Code.

You also raise section 552.117 of the Government Code. Section 552.117(2) excepts from public disclosure information that reveals a peace officer's home address, home telephone number, social security number, and whether the officer has family members.⁴ Under section 552.117(2), a governmental body must also withhold the officers' *former* home addresses and telephone information from disclosure. *See* Open Records Decision No. 622 (1994). However, we note that section 552.117(2) only protects a peace officer's 552.117 information in the context of his role as a "peace officer" and not as a "suspect," "complainant," or "victim" in a criminal investigation. Therefore, the city may not withhold the peace officer's home address contained in the submitted offense report and booking sheet under section 552.117(2).

We note, however, the peace officer's home address contained in the submitted offense report and booking sheet are subject to section 552.1175 of the Government Code. Section 552.1175 states in pertinent part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

⁴"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

We have marked information in the submitted offense report and booking sheet that is subject to section 552.1175. However, you do not inform this office, nor does any of the submitted information indicate, whether the peace officer has elected confidentiality for information about him in accordance with the above-cited subsection 552.1175(b)(1) and (2). If so, the information we have marked in the submitted offense report and booking sheet must be redacted in accordance with section 552.1175. If not, we conclude that the city may not withhold this information.

You also assert that portions of the submitted information are excepted under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Accordingly, the information you have marked in the submitted information must be withheld under section 552.130. We have marked additional information that must be withheld under section 552.130.

Finally, we note that section 1703.306 of the Occupations Code prohibits the public disclosure of the results of polygraph examinations. We have marked the polygraph information that must be withheld under section 1703.306 in conjunction with section 552.101 of the Government Code.

To summarize, the sheriff must withhold the information we have marked under common-law privacy. Medical records that we have marked may be released only as provided under

the MPA. The sheriff must withhold the information that we have marked pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. We have marked the information in the submitted offense report and booking sheet that must be withheld under section 552.1175 if the peace officer has elected confidentiality for information about him in accordance with subsection 552.1175(b)(1) and (2). The sheriff must withhold the information you have marked in the submitted information, as well as additional information we have marked, under section 552.130. Finally, polygraph information must be withheld under section 1703.306 of the Occupations Code in conjunction with section 552.101. The remaining submitted information must be released to the requestor.⁵

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

⁵We note that you also argue that portions of the submitted information must be withheld under section 552.119 of the Government Code, and that criminal history must be withheld under both statutory law and under common-law privacy. However, the submitted information to be released contains no information that is excepted under these provisions.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/sdk

Ref: ID# 163870

Enc. Submitted documents

c: Mr. Mike Woods
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